

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TRAVELERS CASUALTY AND SURETY COMPANY as
Administrator for RELIANCE INSURANCE COMPANY,
Plaintiff,

vs.

DORMITORY AUTHORITY - STATE OF NEW YORK,
TDX CONSTRUCTION CORP. and KOHN PEDERSEN
FOX ASSOCIATES, P.C.,

Defendants.

DORMITORY AUTHORITY OF THE STATE OF NEW
YORK and TDX CONSTRUCTION CORP.,

Third-Party Plaintiffs,

vs.

TRATAROS CONSTRUCTION, INC.,

Third-Party Defendant.

TRATAROS CONSTRUCTION, INC. and TRAVELERS
CASUALTY AND SURETY COMPANY,

Fourth-Party Plaintiffs,

vs.

CAROLINA CASUALTY INSURANCE COMPANY;
BARTEC INDUSTRIES INC.; DAYTON SUPERIOR
SPECIALTY CHEMICAL CORP. a/k/a DAYTON
SUPERIOR CORPORATION; SPECIALTY
CONSTRUCTION BRANDS, INC. t/a TEC; KEMPER
CASUALTY INSURANCE COMPANY d/b/a KEMPER
INSURANCE COMPANY; GREAT AMERICAN
INSURANCE COMPANY; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA.;
UNITED STATES FIRE INSURANCE COMPANY;
ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.
f/k/a COMMERCIAL UNDERWRITERS INSURANCE
COMPANY; ZURICH AMERICAN INSURANCE
COMPANY d/b/a ZURICH INSURANCE COMPANY;
OHIO CASUALTY INSURANCE COMPANY d/b/a OHIO
CASUALTY GROUP; HARLEYSVILLE MUTUAL
INSURANCE COMPANY (a/k/a HARLEYSVILLE
INSURANCE COMPANY.); JOHN DOES 1-20 and XYZ
CORPS. 1-12,

Fourth-Party Defendants.

Case No. 07-CV-6915 (DLC)
ECF CASE

**FOURTH-PARTY
PLAINTIFFS' ANSWER TO
COUNTERCLAIM OF
BARTEC INDUSTRIES INC.**

Plaintiff/Counterclaim Defendant/Fourth-Party Plaintiff, Travelers Casualty and Surety Company (“Travelers”), and Third-Party Defendant/Fourth-Party Plaintiff, Trataros Construction, Inc. (“Trataros”), by and through their attorneys Dreifuss Bonacci & Parker, LLP, as and for their Answer to the Counterclaim of Fourth-Party Defendant, Bartec Industries Inc. (“Bartec”) allege as follows:

1. The allegations contained in the unnumbered paragraph entitled “As and For a Full and Complete Counterclaim against Fourth-Party Plaintiffs, Trataros Construction, Inc. and Travelers Casualty and Surety Company” (hereinafter, the “Counterclaim”) are denied.

WHEREFORE, Travelers and Trataros demand judgment against Bartec for the following relief:

- a. dismissal of the Counterclaim with prejudice;
- b. award of attorneys fees, costs and disbursements; and
- c. such other and further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Bartec’s Counterclaim fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Bartec lacks standing to pursue claims against Trataros and Travelers.

THIRD AFFIRMATIVE DFEFENSE

The Counterclaim is barred by the provisions of the appropriate statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the equitable doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the equitable doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole or in part, as a result of Bartec's breach(es) of the subcontract between Bartec and Trataros.

EIGHTH AFFIRMATIVE DEFENSE

Any damages allegedly sustained by Bartec were and/or will be caused in whole or in part by the culpable conduct of Bartec, as a result of which Bartec's Counterclaim is barred or diminished in the proportion that such culpable conduct has caused and/or will cause their alleged damages.

NINTH AFFIRMATIVE DEFENSE

The Counterclaim as against Travelers is barred, as Bartec does not qualify as a claimant under the performance bond issued by Reliance Insurance Company in connection with Contract No. 16.

TENTH AFFIRMATIVE DEFENSE

The Counterclaim as against Travelers is barred due to Bartec's failure to satisfy the terms and conditions of the performance bond issued by Reliance Insurance Company ("Reliance") in connection with Contract No. 16.

ELEVENTH AFFIRMATIVE DEFENSE

The Counterclaim as against Travelers is time-barred due to Bartec's failure to timely file suit against Travelers consistent with the terms and conditions of the performance bond issued by

Reliance in connection with Contract No. 16.

TWELFTH AFFIRMATIVE DEFENSE

In the event Bartec has sustained and/or will sustain damages as alleged in its Counterclaim, then such damages were/will be sustained as a result of the conduct of persons and/or entities other than Travelers and/or Trataros, and for whose conduct neither Travelers nor Trataros was responsible.

THIRTEENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the doctrine of mitigation of damages.

FOURTEENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the doctrine of avoidable consequence.

FIFTEENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred as it may not properly be interposed in this action.

SIXTEENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred under the doctrine of release.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Counterclaims is barred by documentary evidence.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Counterclaim as against Travelers is barred, as Travelers' obligations under the bonds issued by Reliance to Trataros have been discharged as a result of cardinal changes to the underlying Contracts Nos. 15 and 16.

NINETEENTH AFFIRMATIVE DEFENSE

Travelers and Trataros reserve their rights to rely upon any and all additional defenses available to them, and all Defendants, third-party defendants, fourth-party defendants, and other

1:07-cv-06915-DLC Travelers Casualty and Surety Company v. Dormitory Authority State of New York et al

Denise L. Cote, presiding

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Company

(Counter

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Company

(Counter

Defendant)

Travelers

**Casualty and
Surety
Company**
*(Cross
Claimant)*

**Travelers
Casualty and
Surety
Company**
(Plaintiff)

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*(Counter
Defendant)*

**Travelers
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Surety
Company**
*(Cross
Claimant)*

**Travelers
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Surety
Company**
(Plaintiff)

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Plaintiff)*

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Authority State
of New York**
*(Counter
Claimant)*

**Dormitory
Authority State
of New York**
(Cross

Claimant)

**Dormitory
Authority State
of New York**
(Defendant)

**TDX
Construction
Corp.**
*(ThirdParty
Plaintiff)*

**TDX
Construction
Corp.**
*(Counter
Defendant)*

**TDX
Construction
Corp.**
*(Cross
Defendant)*

**TDX
Construction
Corp.**
(Defendant)

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Chemical Corp.**

*(Fourth Party
Defendant)*

**Dayton
Superior
Specialty
Chemical Corp.**

*(Counter
Claimant)*

**Dayton
Superior
Specialty
Chemical Corp.**

*(Cross
Claimant)*

**Dayton
Superior
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*(Cross
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*(Counter
Defendant)*

**Travelers
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Surety**

Company
*(Cross
Claimant)*

**Trataros
Construction,
Inc.**
*(ThirdParty
Defendant)*

**Trataros
Construction,
Inc.**
*(Counter
Claimant)*

**Trataros
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*(Counter
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**Trataros
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**Carolina
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Company**
*(Counter
Claimant)*

**Carolina
Casualty
Insurance
Company**
(Cross
Claimant)

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